Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications, Inc.,	)	WC Docket No. 03-16
Michigan Bell Telephone Company, and	)	
Southwestern Bell Communications Services,	)	
Inc. for Provision of In-Region, InterLATA	)	
Services in Michigan	)	

OPPOSITION OF Z-TEL COMMUNICATIONS, INC.

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Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, hereby submits its comments in response to the Public Notice (DA 03-156) issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding. The Public Notice invites interested parties to respond to the Application of SBC Communications, Inc., Michigan Bell Telephone Company and Southwestern Bell Communications Services, Inc. (collectively, "Ameritech") to provide in-region, InterLATA services in the State of Michigan, pursuant to section 271 of the Communications Act of 1934, as amended (the "Act").

I. INTRODUCTION AND SUMMARY

Z-Tel is a competitive local exchange carrier ("CLEC") that offers bundled packages of local, long distance and enhanced services to residential and small business consumers using the combination of unbundled network elements ("UNEs") known as the UNE Platform, or "UNE-P." At present, Z-Tel provides integrated local, long distance and enhanced services to more than 200,000 consumers, located in over 46 states, including Michigan.

By these comments, Z-Tel opposes Ameritech's Application for section 271 relief in Michigan because Ameritech does not satisfy competitive checklist item 2,[1] which requires that Ameritech provide nondiscriminatory access to UNEs, including the operations support system ("OSS") UNE. Specifically, Ameritech discriminates in favor of itself in the provision of critical functions, including line loss notification and wholesale billing, to CLECs such as Z-Tel. These frustrate the development of mass-market competition and the ability of CLECs to provide telecommunications service in Michigan, in violation of section 271. Z-Tel also demonstrates that Ameritech's Application fails to satisfy checklist item 13 because Ameritech will not permit "opt-in" of reciprocal compensation terms and conditions. Finally, Z-Tel shows that Ameritech's Application is contrary to the public interest. Thus, the Commission must reject Ameritech's Application.

II. AMERITECH FAILS TO SATISFY COMPETITIVE CHECKLIST ITEM 2 BECAUSE IT DOES NOT PROVIDE ADEQUATE AND NONDISCRIMINATORY ACCESS TO OSS

To demonstrate compliance with an item contained in the section 271 competitive checklist, such as OSS, Ameritech must prove that it "provide[s] that checklist item, and must demonstrate that it currently furnishes, or is ready to furnish, the checklist item on a nondiscriminatory basis.[2] Specifically, the Commission has established the following standard for functions provided by the BOCs to competing carriers:

> First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to

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1 47 U.S.C. § 271(c)(2)(B)(ii).

2 *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3973-74 at ¶ 52 (1999). ("*Bell Atlantic NY Order*"), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

> itself. Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness. For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete."[3]

Ameritech fails to provide to Z-Tel, and presumably to other CLECs, adequate and nondiscriminatory access to OSS in accordance with this standard, and therefore does not satisfy competitive checklist item 2. As demonstrated below, Ameritech's provision to Z-Tel of line loss reports and wholesale billing information inferior to that provided by Ameritech for its own retail operations is flatly discriminatory and therefore violates section 271 of the Act.

A. Ameritech Discriminates Against Z-Tel And Causes Competitive Harm to Z-Tel By Failing To Provide Accurate, Timely And Reliable Line Loss Reports

In reviewing Ameritech's application for section 271 relief, the Michigan Public Service Commission ("MPSC") recognized the severe anticompetitive effects threatened by Ameritech's continued failure to provide accurate and timely line loss reports. Specifically, the MPSC stated that:

> ...this problem has a grave potential effect on competition for local exchange service and is one of the most serious of the problems raised in this case. Billing for services after they have been canceled...may have serious negative effects on the reputations of...competitive providers. Failure to provide timely notice of migrations is an egregious and anticompetitive neglect of [Ameritech's] duty.[4]

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3 *Id.*

4 *Michigan PSC*, Opinion and Order in case No. U-12320 (rel. Dec. 20, 2001).

However, despite the efforts of CLECs and state regulatory commissions to resolve issues related to Ameritech's apparent operational deficiencies, Ameritech continues to provide, to Z-Tel and other competitors, unreliable line loss reports in Michigan and throughout Ameritech's five-state footprint.

The provision by Ameritech of accurate, timely, and reliable line loss reports is critical to the operations of UNE-P providers, such as Z-Tel, operating within the State of Michigan. Because Z-Tel purchases local switching from Ameritech, Z-Tel has no choice but to rely entirely upon line loss reports provided by Ameritech to determine whether any of its customers have discontinued telephone service, or otherwise have migrated from Z-Tel's network and currently are accepting service from an alternative carrier. To the extent that Ameritech fails to provide to Z-Tel accurate and timely line loss reports, the systems employed by Z-Tel will continue to bill Z-Tel's former customers for local telephone service that Z-Tel no longer provides. Consequently, former customers of Z-Tel frequently are billed by Z-Tel for telephone service that has been discontinued, or "double-billed" by Z-Tel for telephone service that is being provided by a different carrier.

When a customer is wrongly billed by Z-Tel for telephone service, the inevitable result is that Z-Tel is blamed for the billing error.[5] This type of customer service experience not only damages the business reputation of Z-Tel, but also results in consumer complaints filed with the Commission, the MPSC and the Michigan Attorney General's Office.[6] Moreover, the inflated volume of consumer complaints, including those directed to customer service representatives of Z-Tel, require the commitment of

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[5] Walters Declaration, ¶¶ 7-8 (attached hereto).
[6] *Id.*

significant additional resources of Z-Tel to investigate such complaints and to issue the appropriate credit to affected customers. The failure of Ameritech to provide to Z-Tel accurate line loss reports also adversely affects Z-Tel's ability to precisely audit the fees for UNEs billed by Ameritech to Z-Tel. Because such routine audits are critical to Z-Tel's maintenance of accurate financial statements, the inadequacy of line loss reports provided by Ameritech to Z-Tel ultimately hinders Z-Tel's performance of even its most routine business operations.

B. Ameritech Fails to Provide Accurate Wholesale Bills to Z-Tel

The provision of accurate and timely wholesale bills to Z-Tel by Ameritech is critical to Z-Tel's internal business planning, and hence the ability of Z-Tel to offer competitive telephone service to customers in Michigan. In this regard, competitive checklist item 2 requires that Ameritech provide to Z-Tel "auditable" bills for wholesale service provided by Ameritech, including clear cross references to the applicable tariff or interconnection agreement which permit rate descriptions and amounts to be verified.[7] The failure of Ameritech to provide to Z-Tel accurate and timely wholesale bills complicates Z-Tel's task of identifying incorrect charges and, as may be necessary, initiating legitimate billing disputes. Moreover, Ameritech's grossly inefficient dispute resolution process denies Z-Tel the ability to accurately account for its own operating expenses, and thereby to establish business plans for the long term. Accordingly, Ameritech's wholesale billing methods and procedures are wholly inadequate and therefore violate section 271 of the Act.

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[7] *Id.* ¶¶ 11-13.

1. The Wholesale Bills Provided By Ameritech To Z-Tel Cannot Be Effectively Audited or Reconciled

As noted above, the provision of accurate and timely wholesale bills by Ameritech to Z-Tel is critical to Z-Tel's internal auditing process and the long term planning of Z-Tel's Michigan operations. Indeed, Ameritech's failure to render accurate wholesale bills adversely affects Z-Tel's ability to account for its own operating expenses. Moreover, because the wholesale bills provided to Z-Tel by Ameritech lack any cross references to the applicable tariff or interconnection agreement, Z-Tel is unable to audit effectively its invoices and to identify billing errors by Ameritech. Significantly, this has resulted in hundreds of outstanding disputes in Michigan.[8] The wholesale bills provided by Ameritech to Z-Tel are entirely inadequate to support Z-Tel's internal business functions and therefore hinder the ability of Z-Tel to provide competitive telephone service to customers in Michigan

2. Ameritech Does Not Provide Adequate Procedures For The Effective Resolution Of Billing Disputes

The harmful effects of Ameritech's inability to provide Z-Tel accurate wholesale bills are compounded by Ameritech's grossly inefficient resolution of billing disputes. Indeed, because Ameritech frequently fails to fully respond to billing disputes. Z-Tel is forced to commit substantial additional time and resources to re-filing its disputes several months after a billing error has occurred.

The processes offered by Ameritech for the resolution of billing disputes, are tedious and highly ineffective. In many cases, billing disputes raised by Z-Tel are not addressed by Ameritech analysts having an appropriate knowledge or understanding of

Ameritech's UNE-P product offering and the corresponding rate elements that apply for UNE-P providers such as Z-Tel. Consequently, the decisions rendered by Ameritech with regard to billing disputes raised by Z-Tel are vague, or simply incorrect.

III. AMERITECH FAILS TO SATISFY CHECKLIST ITEM 13 BECAUSE IT DOES NOT PERMIT CLECS TO OPT-IN TO RECIPROCAL COMPENSATION PROVISIONS OF EXISTING INTERCONNECTION AGREEMENTS

Competitive checklist item 13 obligates Ameritech to enter reciprocal compensation agreements with Z-Tel and other CLECs for the transfer and termination of local voice traffic in accordance with section 252(d).[9] Pursuant to section 252(d)(2)(A) of the Act, Ameritech must abide by section 251(b)(5), which requires Ameritech to enter into an agreement with Z-Tel for the exchange of local voice calls between the parties. Ameritech has adopted a region-wide policy that precludes CLECs, including Z-Tel, from adopting state-approved reciprocal compensation contract provisions for the exchange of local traffic found in current interconnection agreements entered into by Ameritech. Instead, Ameritech has wrongfully forced CLECs to negotiate new terms, rather than permit the adoption of existing terms under section 252(i). In doing so, Ameritech clearly denies CLECs the reciprocal compensation contract arrangements to which they are entitled under the Act, including checklist item 13. Accordingly, the Commission must reject the Application.

The Act requires that the applicable state-approved or state-arbitrated reciprocal compensation rate for local traffic be made equally available to all CLECs, pursuant to their respective interconnection agreements with Ameritech, for the relevant

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8 *Id.* ¶ 13.
9 47 U.S.C. § 271(c)(2)(B)(xiii).

state. Under section 252(i), CLECs similarly have a statutory right to adopt interconnection agreements, including reciprocal compensation provisions.[10] Ameritech fails to comply with its obligation pursuant to competitive checklist item 13, in spite of the fact that it has elected not to enter the Commission's *ISP Remand Order* intercarrier compensation regime.

IV. APPROVAL BY THE COMMISSION OF AMERITECH'S APPLICATION FOR SECTION 271 RELIEF IS CONTRARY TO THE PUBLIC INTEREST

Under section 271 of the Act, the approval of Ameritech's Application by the Commission requires an independent determination, separate and distinct from an evaluation of Ameritech's compliance with the items of the competitive checklist, that the Commission's grant of the relief requested by Ameritech will not adversely affect the public interest. The Commission has stated that the public interest analysis required by this section presents the Commission an important opportunity to further review the circumstances of the Application and to ensure that no other relevant factors exist such that approval of the Application would frustrate the purpose of the Act.[11]

A. Ameritech's Winback Program Is Anticompetitive And Adversely Affects The Public Interest

As demonstrated above, Ameritech's provision to Z-Tel of line loss reports and wholesale billing information inferior to that provided by Ameritech for its own retail operations is flatly discriminatory. Significantly, Ameritech also derives a distinct competitive advantage by its ability to immediately generate detailed information

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[10] Z-Tel acknowledges that the Commission's ISP Remand Order places narrow restrictions on the ability to adopt interconnection agreements in existence prior to April 27, 2001. *See Order On Remand And Report And Order In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *In re Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, 16 FCC Rcd. 9151 (2001) (subsequent history omitted) ("*ISP Remand Order*").

about customers migrating from Z-Tel's network that is essential to the success of Ameritech's Winback program for its own retail operations.[12] Ameritech's anticompetitive conduct hamstrings the pronounced efforts of CLECs, including Z-Tel, to solicit the business of Michigan consumers and therefore impedes mass-market competition in the State of Michigan.

In general, Ameritech sends to former customers promotional marketing materials for residential service within five days of the customers' termination of Ameritech service. However, due to the untimely provision of line loss reports by Ameritech to Z-Tel, Z-Tel cannot employ similarly aggressive marketing campaigns to solicit former customers of Ameritech. Moreover, because the line loss reports provided to Ameritech's retail operations precisely detail whether a former customer of Z-Tel has disconnected service entirely, or instead accepted service by another carrier, Ameritech's so-called "Winback" campaigns target only former customers that appear to be seeking an alternative telephone service provider.[13] Without Ameritech's provision of comparable line loss information, Z-Tel is cannot similarly target recipients for its promotional offerings.

As noted above, Ameritech's failure to provide to Z-Tel accurate and timely line loss reports frequently results in Z-Tel's "double-billing" of its former customers, which has been the source of consumer complaints filed with the Commission, the MPSC and the Better Business Bureau. The unfortunate customer experiences that result from Ameritech's failure to provide to Z-Tel adequate line loss information causes grave harm to Z-Tel's business reputation, and to the reputation of

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11 *See Ameritech Michigan Order*, 12 FCC Rcd 20747, ¶¶ 360-66 (1997).

12 Walters Declaration, ¶¶ 15-16.

competitive telephone service in general. Moreover, Ameritech adds insult to injury by exaggerating such instances of customer dissatisfaction with the service provided by Z-Tel when soliciting during Ameritech's Winback program.

In a recent complaint proceeding brought by Z-Tel, the Illinois Commerce Commission ("ICC") concluded that Ameritech's deficient provision to Z-Tel of line loss reports has significant anticompetitive effects on the ability of Z-Tel to provide telephone service.[14] Specifically, the ICC noted that Ameritech's failure to provide to Z-Tel accurate, timely and reliable line loss reports effectively results in Ameritech's commission of an anticompetitive "double whammy" against Z-Tel: Ameritech is able to immediately focus its Winback marketing efforts on customers that switch to Z-Tel, while at the same time causing Z-Tel to wrongfully double-bill its former customers. Such conduct clearly violates the purpose of the Act, and therefore Ameritech's Application should not be approved.

B. Because Ameritech Fails To Comply With Federal Law Governing The Adoption Of Reciprocal Compensation Rates For Local Traffic, It Should Not Be Entitled To Relief Under Section 271 Of The Act

Pursuant to section 252(i) of the Act, a CLEC may obtain the terms and conditions of any currently approved and effective interconnection agreement between Ameritech and any other CLEC.[15] Although the Commission has restricted the opt-in rights of CLECs with regard to interconnection agreements existing prior to the effective date of the *ISP Remand Order*, similar limitations have not been placed on agreements negotiated subsequent to that date. Moreover, Ameritech has not even elected the

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13 *Id.*

14 *See Z-Tel Communications, Inc. v. Illinois Bell Telephone Company (Ameritech Illinois) – Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act*, Order (I.C.C., Feb. 27, 2002).

Commission's rate regime provided for in the *ISP Remand Order*. Accordingly, pursuant to section 252(i) of the Act and the Commission's *ISP Remand Order*, Ameritech is required to make available to all CLECs, including Z-Tel, the reciprocal compensation provisions currently approved interconnection agreement between Ameritech and any CLEC.

As noted above, in spite of the Commission's clear directive in the *ISP Remand Order*, and in violation of section 252(i) of the Act, Ameritech has adopted a region-wide policy that precludes CLECs from adopting state-approved reciprocal compensation provisions for the exchange of local traffic found in current interconnection agreements entered into by Ameritech. Instead, Ameritech has wrongfully conditioned the availability of such rates on the CLECs' willingness to "negotiate" reciprocal compensation terms and conditions for local voice traffic and other types of section 251(b)(5) traffic. In doing so, Ameritech not only violates the Act and the Commission's rules, but also restrains competition by using its own market power to place unlawful limitations upon the interconnection arrangements available to CLECs. From a practical standpoint, the opt-in policies imposed upon CLECs by Ameritech create grave uncertainty within the industry, with respect to the future availability and cost of Ameritech products and services that are essential to CLEC businesses.

C. Endorsement Of Ameritech's Application By The MPSC Is Predicated On The Continued Availability of UNE-P

In its written recommendation that the Commission approve Ameritech's Application for section 271 relief, the MPSC emphasized the delicate state of competition in Michigan's market for local telephone service, and accordingly, the MPSC expressly

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[15] 47 U.S.C. § 252(i).

predicated its endorsement of Ameritech's Application on the continuing availability of UNE-P.[16] Specifically, the letter of the MPSC to the Commission states:

> We do issue one caveat, the Michigan competitive market is significantly dependent on the availability of the Unbundled Network Element Platform (UNE-P). We believe that elimination or severe curtailment of UNE-P would adversely impact our competitive market. Our recommendation is **predicated** on the FCC's continuation of policies and rules that allow competitors to access UNE-P for the foreseeable future and throughout an orderly transition to facilities-based competition. In fact, we support UNE-P as consistent with the methods of competition specified in the 1996 Federal Act, including resale, facilities-based and unbundled network elements.[17]

Therefore, to the extent that the availability of UNE-P is eliminated or severely curtailed by the Commission's proposed policies its the ongoing *Triennial Review*[18] proceeding, approval of Ameritech's Application by the Commission would contravene the express recommendation of the MPSC.

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16 Letter for Chairman Laura Chappelle, Commissioner David A. Svanda and Commissioner Robert B. Nelson, Michigan Public Service Commission, to the Commissioners of the Federal Communications Commission 2 (Jan. 13, 2003).

17 *Id.*

18 CC Docket 01-338, *et. al.*

V. CONCLUSION

As demonstrated above, Ameritech does not fully comply with the requirements of the competitive checklist. Moreover, the Commission's grant of section 271 to Ameritech, for the State of Michigan, would frustrate the purpose of the Act and would adversely affect the public interest. Accordingly, the Commission should not approve the Application of Ameritech for authority to provide in-region, InterLATA services in the State of Michigan.

Respectfully submitted,

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DECLARATION OF RON A. WALTERS ON BEHALF OF Z-TEL COMMUNICATIONS, INC.

I. INTRODUCTION

1. My name is Ron A. Walters. I am the Vice President-Industry Policy for Z-Tel Communications, Inc. My business address is 601 South Harbor Island Boulevard, Suite 220, Tampa, Florida 33602.

2. I have 19 years of experience in the telecommunications industry. I took my current position with Z-Tel in May of 2000. My current responsibility includes all industry policy, regulatory, and local exchange carrier relation issues within SBC Communications' 13-state service territory. Previously, I was the Director-Industry Policy and Senior Product Manager for Intermedia Communications. I also spent 13 years at Ameritech, where I held leadership positions in Business Development, Product Marketing, Sales, Investor Relations, and Regulatory. I have a Bachelor of Arts and Masters of Business Administration (Finance) from Indiana University.

3. The purpose of this affidavit is to demonstrate that Michigan Bell, Inc. ("Ameritech") continues to fail to satisfy the competitive checklist contained in section 271 of the federal Communications Act ("Act"). To that end, I first demonstrate that Ameritech's OSS processes for line loss reporting and for billing discriminate against

CLECs, such as Z-Tel, in violation of checklist item 2. Next, I explain that Ameritech's section 271 application is contrary to the public interest. Finally, I show that the UNE-P is the only form of competition that has taken root in Michigan. As goes UNE-P, so goes competition.

II. AMERITECH'S LINE LOSS AND WHOLESALE BILLING OSS PROBLEMS DISCRIMINATE AGAINST CLECS IN VIOLATION OF ITEM TWO OF THE SECTION 271 COMPETITIVE CHECKLIST

4. In this section, I demonstrate that Ameritech's inadequate and discriminatory provision of line loss information to Z-Tel violates checklist item 2. First, I show that Ameritech's line loss provisioning problems go back years and persist even to this day, and that these line loss problems result in discrimination against CLECs. Next, I explain that Ameritech's wholesale billing process similarly is inadequate and thus warrants a finding of non-compliance with checklist item two.

A. Line Loss

5. Z-Tel launched service in Michigan in November 2000. Z-Tel immediately experienced considerable problems with delayed and missing line loss notification.

6. Line loss problems continue to this day. The following recent facts demonstrate the material problems that continue to plague Ameritech's provision of line loss notification to CLECs:

- May 1, 2002: Ameritech made a filing in Illinois that it had successfully implemented across the Ameritech region (including Michigan) process and system modifications to resolve line loss issues.

- May 8, 2002: The Illinois Commerce Commission ("ICC") found a formal complaint proceeding initiated by Z-Tel, that Ameritech had unreasonably impaired the speed, quality, or efficiency of services used by Z-Tel through the provisioning of late and inaccurate 836 line loss notices, as prohibited by Illinois State Law. The ICC also found that Ameritech's conduct injured Z-Tel and placed Z-Tel's reputation in jeopardy and that Ameritech's actions were per se impediments to competition in violation of State Law. Note that Ameritech utilizes the identical line loss system and process in all five Ameritech states.

- June 3, 2002: Ameritech made a filing in this proceeding that more modifications were needed due to the impact of the May 3 modifications.

- June 10, 2002: Ameritech re-flowed 132 MI notices to Z-Tel due to a system problem with partial migrations.

- July 2, 2002: Ameritech filed with the Michigan Public Service Commission ("MPSC") its final report on line loss asserting that all problems had been resolved.

- August 12, 2002: The Ameritech KPMG report shows problems continue: It showed a failure rate of 19.5% in providing timely line loss notifications.

- Ameritech acknowledged that it failed to report to Z-Tel 274 line losses in Michigan between August 15, 2002 and September 11, 2002. These were eventually received on September 19, 2002.

- November 12, 2002: Ameritech acknowledged that 68 notices did not contain conversion dates and needed to be re-flowed.

In short, line loss problems keep popping up even after Ameritech claims it is "fixed."

7. Line loss problems exist disproportionately in Michigan. At the end of August 2002, only 14% of Z-Tel's total customers were located in Michigan. However, 33% of double billing complaints arose in Michigan. As of November 16, 2002, 11% of Z-Tel's customers were located in Michigan, yet 19% of our double billing occurrences were in Michigan. The primary cause of double billing is faulty line loss notification.

8. Ameritech's line loss failures have resulted in a tremendous number of complaints against Z-Tel in Michigan, including:

- 7,596 double billing customer complaints to Z-Tel customer service (since January 2001) – Z-Tel only has 22,000 current Michigan customers.
- 194 complaints to Z-Tel Regulatory
- 119 complaints to the MPSC
- 11 complaints to the Michigan Attorney General
- 8 complaints to the Better Business Bureau
- 8 complaints to the FCC

You can imagine the impact this has to Z-Tel's reputation in Michigan.

9. Line loss is not only a 271 issue, it is clearly one of the most important ones for a UNE-P provider like Z-Tel. It is every bit as important as the ordering system. Ameritech is correct about one thing - line loss notification has improved from horrible to poor when Ameritech is compared to other RBOCs. It is very premature to declare this issue resolved.

10. Ameritech should deliver six consecutive months of acceptable line loss performance before this problem is considered "fixed." The target should be 97%+ of all line loss notices delivered within 24 hours (including an accounting for all missing line loss notices – which is not addressed by Michigan performance measure #13) and performance that exceeds that provided to the Ameritech retail unit. Until this standard is met, Ameritech should not be allowed to pursue winback efforts for 30 days, and it should not receive a passing grade on checklist item 2.

B. Wholesale Billing

11. Another area of significant concern is Ameritech's wholesale billing to CLECs. Ameritech's bills are essentially impossible to accurately audit and/or reconcile. The Ernst &Young Report reinforces this point:

> PM 14 (Parity Measures) – The process by which the Company performed bill audits to verify wholesale universal service ordering code (USOC) rates did not ensure all items in the audit sample were tested and did not obtain all the relevant information in all cases to accurately determine if the USOC rate was accurate. Additionally, for the retail comparison for both resale submeasures, the company did not have a process in place to accurately capture and report when invalid USOC rates were identified in the bill and audit process. Also, for the Resale monthly recurring/non recurring wholesale submeasure, the company's process does not compare the USOC rates per the rate tables to the actual bill sent. Utilizing the Company's current process, a difference would not be identified.[1]

There is simply no doubt that Ameritech's wholesale billing performance is materially inadequate.

12. Z-Tel's experience proves that Ameritech has substantial problems with respect to bills it sends to CLECs. Moreover, even when Z-Tel identifies clear overcharges, Ameritech's billing dispute process is excessively difficult to navigate. For example, Z-Tel has recently disputed 332 occurrences of being billed for UNEs after Z-Tel submitted a disconnect order. Ameritech's dispute response was that they couldn't disconnect the line because it wasn't a Z-Tel customer. Nonetheless, Ameritech continued to bill Z-Tel for the underlying UNEs for that customer's line.

13. Again, let me reference some facts.

- As of November 25, 2002, Z-Tel had 385 line-item billing disputes open with Ameritech. Of these, 316 were more than 60 days old, and 246 of those were more than 120 days old. The total dollar amount associated with these disputes is $1.9 million.

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1 MPSC Case No. U-12320, Ernst & Young Report of Independent Accountants (Oct. 18, 2002) (attached to Ehr Affidavit as Attachment N).

- ➢ The problem was so severe that Z-Tel launched informal dispute resolution with Ameritech on July 29, 2002. Ameritech has recently verbally agreed to adjust some of these items, but most of the credits have not been received by Z-Tel.

- ➢ The inability to resolve billing disputes in a timely manner wreaks havoc on Z-Tel's ability to account for its cost of goods sold, and greatly hamstrings Z-Tel's ability to do business planning and denies Z-Tel a meaningful opportunity to compete in Michigan.

The 271 checklist mandates that Ameritech provide timely and accurate bills to CLECs. The task requires that Ameritech make bills "auditable" by including clear cross references to the applicable tariff, call flow, and interconnection agreement so rate descriptions and rate amounts can be verified. Ameritech's failure to provide such a wholesale bill further demonstrates that Ameritech fails to provide nondiscriminatory access to the OSS UNE.

III. AMERITECH'S 271 APPLICATION IS CONTRARY TO THE PUBLIC INTEREST

14. In addition to the competitive checklist violations, the Commission should reject Ameritech's Application as contrary to the public interest for two reasons. First, Ameritech's "winback" campaign, through which it lures consumers away from CLECs and back to Ameritech, is blatantly anticompetitive and discriminatory. Second, Ameritech's refusal to honor section 252(i) interconnection agreement "opt-in" requests is similarly anticompetitive and discriminatory. As such, the Commission must find that Ameritech's Application is contrary to the public interest.

A. Winback

15. When Z-Tel acquires a customer from Ameritech, Ameritech sends a "winback" marketing letter to the Z-Tel customer, offering discounted rates for

Ameritech's services. Based on a sample of letters Z-Tel has obtained from its customers, Ameritech seems to be sending out winback letters within about five days of the date on which the customer begins receiving Z-Tel service. Because Ameritech does not send accurate line loss notifications to Z-Tel (as described above), Z-Tel completely lacks the ability to conduct a similar winback campaign for Z-Tel's former customers. Indeed, in many instances it takes weeks for Z-Tel even to know that a customer has left Z-Tel. Moreover, if double billing results from Ameritech's failure to provide line loss notification, Z-Tel's reputation with its former customer is damaged, which further harms Z-Tel's ability to winback a former customer.

16. At bottom, Ameritech is able to efficiently and effectively market to Z-Tel's customers, but Z-Tel does not have the same opportunity. This creates an anticompetitive advantage for Ameritech. Indeed, this issue has been so problematic in Illinois that Z-Tel filed a formal complaint at the ICC against Ameritech on this issue. In response, the ICC enjoined Ameritech from conducting winback activities for a period for 17 days following the migration of its customers to Z-Tel's network. To level the winback playing field, Ameritech should be obligated to provide CLECs with line loss information as quickly and accurately as Ameritech provides this information to its retail marketing group. Until such time as the winback playing field is leveled in this way, grant of interLATA relief to Ameritech will be contrary to the public interest.

B. 252(i) Violations

17. On November 27, 2002, Z-Tel informed Ameritech that it intended to "opt-in," pursuant to section 252(i), to the existing interconnection agreement between Ameritech and AT&T. Despite repeated follow ups on this request, Z-Tel has been unable

to obtain the requested agreement. Z-Tel is in contact with Ameritech's attorneys regarding this issue, and it appears that the parties may reach a mutually-agreeable resolution. At this time, however, Z-Tel has been unable to obtain the AT&T agreement pursuant to section 252(i).

18. Section 252(i) is the primary non-discrimination provision of the local competition provisions of the Act. Yet Ameritech has successfully limited the ability of CLECs to utilize this nondiscrimination provision to obtain the benefits of interconnection agreements arbitrated by larger companies, such as AT&T. Ameritech's unilateral refusal to abide by section 252(i)'s nondiscrimination requirements demonstrates that its Application is contrary to the public interest.

IV. UNE-P IS CRITICAL TO COMPETITION IN MICHIGAN

19. There can be no doubt that UNE-P is critical to on-going competition in Michigan. Indeed, the MPSC said it best in its January 13, 2003 letter to Chairman Powell:

> We do issue **one caveat**, the Michigan competitive market is **significantly dependent** on the availability of the Unbundled Network Element-Platform (UNE-P). We believe that the elimination or severe curtailment of UNE-P would adversely impact our competitive market. Our recommendation is **predicated** on the FCC's continuation of policies and rules that allow competitors access to UNE-P for the foreseeable future and throughout an orderly transition to facilities-based competition. In fact, we support UNE-P as consistent with the methods of competition specified in the 1996 Federal Act, including resale, facilities-based and unbundled network elements. (emphasis added)

20. During 2001, Michigan added approximately 400,000 UNE-P lines – ranking it 3rd in the country in line gain. UNE-P was responsible for more than 60% of the

growth in competitive access lines nationwide. One of the reasons UNE-P is so successful is that it is uniquely structured to support mass-market competition. Because of its speed to market, flexibility, and broad application, UNE-P has provided the foundation for a new wave of smaller entrants, like Z-Tel, with innovative ideas.

21. UNE-P allows Z-Tel to cover the entire SBC-Ameritech service area footprint. We don't deny customers service based on location. We have rural, suburban and urban customers throughout Michigan.

22. And contrary to Ameritech's rhetoric, Z-Tel has aggressively invested in telecommunications. No, we haven't installed loops or deployed class 4 or 5 basic dial tone switches. Instead we have used UNE-P to gain access to these monopoly facilities. And Z-Tel has invested heavily in enhanced capabilities that add value to our customers and differentiate our product from Ameritech's .

23. Today, Z-Tel employs almost 1,000 people and since 1999 has built a nationwide footprint covering 46 states and serving 200,000 customers. Z-Tel has invested over $50 million in equipment and another $100 million in personnel and operational systems to build its value-added platform. Features such as web-integrated calling, unified messaging, web-integrated voice mail, find me service, as well as voice recognition are now components of Z-Tel's ZlineHome and ZlineBusiness product bundles. The product is unmatched in the industry today (as clearly illustrated by the Personal Voice Assistant demo at www.z-tel.com). Without UNE-P, Z-Tel's offering – and the competitive responses from Ameritech and others – would not exist today.

V. CONCLUSION

24. As I demonstrated above, Ameritech section 271 falls far short of satisfying the requirements of section 271. To the extent the Commission approves the Application, it must recognize and preserve the availability of UNE-P to ensure the continued existence of competition in Michigan.

25. This concludes my declaration.

I declare under the laws of the United States that the statements presented herein are true and correct.

Ron A. Walters